IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2423 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESHKUMAR BHAGWANBHAI MACHHI

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 2423 of 2002

MR BHARAT BELSARE for Petitioner No. 1

MR JAYESH H BELSARE for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1

MR DABHI, Ld. AGP for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 24/02/2003

ORAL JUDGEMENT

1. Leave to add Secretary, Education Department as party respondent.

2. Rule. Mr.M.R.Shah, learned Counsel, waives service of notice of rule for respondent No.1. Mr.Dabhi, learned AGP appears and waives service of notice of rule for respondent No.2 and newly added respondent. With the consent of the parties, the matter is taken up for final hearing.

3. The present petition is preferred by the petitioner for quashing and setting aside the letter dated 4-12-2001 of respondent No.2 and for giving directions to respondents to consider the application of the petitioner for absorption in accordance with resolution dated 23-8-1973 and the petitioner has also prayed for considering the case of the petitioner as eligible for absorption, since he is in service prior to 1999.

4. Heard Mr.B.H.Belsare, learned Counsel for the petitioner, Mr.M.R.Shah, learned Counsel for respondent No.1 and Mr.Dabhi, learned AGP for respondents No.2 and 3.

5. Having heard the learned Counsel appearing for the petitioner as well as for the respondents, I am of the view that the present case is covered by the decision of this Court dated 1-2-2003 in SCA No.5378/2001 and allied matters. In the aforesaid matters, this Court, at para 9, had observed that when resolution dated 8-12-1999 is interpreted by this Court (Coram: P.B.Majmudar, J.) in SCA No.2506/2001 it is necessary that the State Government should reconsider the matter and should consider all the aspects including the interpretation made by this Court of the said resolution. In the said matter, ultimately direction was given to the petitioners to make representation and the Secretary, Education Department was directed to consider the matter. In my view, no elaborate discussion is required since the matter is covered by the decision in the aforesaid case and the petitioner would be entitled to the same benefits as they were conferred upon the petitioners of SCA No.5378/2001 and allied matters as per the decision dated 1-2-2003.

6. In view of the aforesaid, I am of the view that the following directions shall meet with the ends of justice:

6.1 The petitioner shall file a detailed

representation pointing out his grievances and he shall also produce the copy of the order passed by this Court (Coram: P.B.Majmudar, J.) in SCA No.2506/2001 and such representation shall be filed within a period of fifteen days from today.

6.2 The Secretary, Education Department of the State Government, shall consider the matter afresh in light of the judgement of this Court (Coram: P.B.Majmudar, J.) and shall render the decision within a period of three months from the date of receipt of the order of this Court.

6.3 The Secretary, while passing the order, shall take into consideration all the details, which are produced by the petitioner and also the details which may be produced by the concerned Ashram Shala or the District Panchayat, as the case may be, and the decision shall be communicated to the petitioner by registered A.D. post.

7. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No costs. Office shall forward copy of the order dated 1-2-2003 passed by this Court in SCA No.5378/2001 together with the writ of this matter. Direct service is permitted.

24-2-2003 (Jayant Patel, J.)

vinod